## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA WESTERN DIVISION

NO.	5:11-CV-661-F	
KENNETH JACKSON,	)	
Plaintiff,	)	
v.	) ) )	MEMORANDUM AND RECOMMENDATION
VETERANS ADMIN. M.C. CENTER,	)	
Defendant.	) ) )	

Plaintiff has filed an application to proceed *in forma pauperis*, and has demonstrated appropriate evidence of inability to pay the required court costs. However, the Court must also conduct a review pursuant to 28 U.S.C. § 1915 which requires the Court to dismiss all or any part of an action found to be frivolous or malicious, which fails to state a claim upon which relief can be granted, or which seeks money damages from a defendant immune from such recovery. *See* Cochran v. Morris, 73 F.3d 1310, 1315-16 (4<sup>th</sup> Cir. 1996). A case is frivolous if it lacks an arguable basis in either law or fact. *See* Neitzke v. Williams, 490 U.S. 319, 325 (1989). For the following reasons the undersigned recommends that Plaintiff's Complaint be found insufficient to survive review under 28 U.S.C. § 1915.

In making the frivolity determination, *pro se* complaints are entitled to more liberal treatment than pleadings drafted by attorneys. *See* White v. White, 886 F.2d 721, 724 (4<sup>th</sup> Cir. 1989). However, the court is not bound to accept the truth of the pleadings and may dismiss claims which are based on wholly irrational or incredible factual allegations. *See* 

Denton v. Hernandez, 504 U.S. 25, 33 (1992). Absent such wholly fantastic claims, the

"initial assessment of the in forma pauperis plaintiff's factual allegations must be weighted

in [his] favor." Id.

Plaintiff states the following as the only factual allegations in his Complaint:

"Guns carried by VA police on psych wards . . . stop armed VA police on psychiatric

units[.]" (DE 2-1, pg. 3-4). Likewise, he states that as relief he seeks "\$000." (sic) in

damages. (DE 2-1, pg. 4). These allegations are insufficient to support a claim upon

which relief can be granted. Therefore, the undersigned RECOMMENDS that Plaintiff's

motion to proceed in forma pauperis be GRANTED, but that his Complaint be

DISMISSED as frivolous.

SO RECOMMENDED in Chambers at Raleigh, North Carolina on Tuesday, November 22,

2011.

WILLIAM A. WEBB

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UNITED STATES MAGISTRATE JUDGE